

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TREMAYNE DURHAM,

Civil Action No. 20-09601 (MAS) (TJB)

Plaintiff,

v.

ORDER

JOHN OR JANE DOE 1-7, et al.,

Defendant.

This matter having come before the Court on the Court's *sua sponte* screening of *pro se* Plaintiff Tremayne Durham's civil rights complaint (ECF No. 1), the Court having reviewed the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and determined that dismissal of the complaint is not warranted at this time,¹

IT IS on this 8th day of June, 2021,

ORDERED that Plaintiff's official capacity claims against all Defendants are **DISMISSED WITH PREJUDICE**; and it is further

ORDERED that Plaintiff's complaint (ECF No. 1) shall **PROCEED** against all named Defendants in their individual capacities only at this time; and it is further

¹ Although the Court will permit Plaintiff's complaint to proceed at this time against all named Defendants in their individual capacities, Plaintiff's official capacity claims must be dismissed with prejudice as an official capacity against an officer or administrator is merely a means of raising a claim against his office and in turn the entity which employs him. *See, e.g., Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 n. 55 (1978); *Grohs v. Yatauro*, 984 F. Supp. 2d 273, 280-81 (D.N.J. 2013). Neither a state prison nor a state department of corrections, however, is a "person" amenable to suit under § 1983. *See, e.g., Grohs*, 984 F. Supp. 2d at 280; *see also Grabow v. S. State Corr. Facility*, 726 F. Supp. 537, 538-39 (D.N.J. 1989). Plaintiff's official capacity claims are therefore raised against a Defendant not subject to suit under § 1983, and are dismissed as such.

ORDERED that the Clerk of the Court shall provide Plaintiff with a copy of the USM-285 form for each named Defendant; and it is further

ORDERED that Plaintiff shall complete the form for each Defendant and return them to the Clerk of Court, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608; and it is further

ORDERED that upon Plaintiff's sending of the completed forms to the Clerk of the Court, the Clerk shall issue summons, and the United States Marshal shall serve a copy of the complaint (ECF No. 1), summons, and this Order upon Defendants pursuant to 28 U.S.C. § 1915(d), with all costs of service advanced by the United States; and it is further

ORDERED that the Defendants shall file and serve a responsive pleading within the time specified in Federal Rule of Civil Procedure 12, pursuant to 42 U.S.C. § 1997e(g)(2); and it is finally

ORDERED that the Clerk of the Court shall serve a copy of this Order upon Plaintiff by regular U.S. mail.

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MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE